

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)	
)	
FCC Seeks Comment Regarding Possible)	CB Docket No. BO 16-251
Revision or Elimination of Rules Under The)	
Regulatory Flexibility Act, 5 USC 610)	
)	

COMMENTS OF REC NETWORKS

REC Networks (“REC”) has been involved with advocacy from a regulatory perspective supporting the Low Power FM (“LPFM”) service since prior to the creation of the LPFM service. Over the years, REC has been involved with the ongoing rulemaking process involving LPFM. In the above captioned proceeding, the Commission is proposing over the next 12 months to review various rules based on various factors including the continued need for the rule, the nature of complaints or comments received concerning the rule from the public, the complexity of the rule, the extent to which the rule overlaps, duplicates or conflicts with other federal rules and, to the extent feasible, with state and local governmental rules; and the length of time since the rule has been evaluated to the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.¹ Of concern to REC is the inclusion of §73.871 on this list of rules that are subject to review.²

OVERVIEW OF §73.871

§73.871 of the Commission’s Rules addresses amendments to LPFM applications, mainly centered around applications for original construction permits and applications for major changes to facilities, both of which can be filed during designated filing windows. Specifically, §73.871 states the following:

- New and major changes can only be filed during a filing window (§73.871(a)).

¹ - See *FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 USC 610*, public notice, DA 16-172 (“PN”) (2016) at 1.

² - See PN at 40, also 47 C.F.R. §73.871.

- Amendments that would improve the comparative position of an applicant (e.g. the number of preference points) will not be accepted after the close of the filing window when the point positions of applicants are disclosed (§73.871(b)).
- Changes in ownership where the original party or parties to an application would not retain more than a 50 percent ownership interest in the application as originally filed can't be filed after the close of the window (§73.871(c)(3)).
- Changes in station location of more than 5.6 kilometers (§73.871(c)(1)) are not permitted.
- Universal time sharing agreements (§73.871(c)(4)) and moves of more than 5.6 kilometers to co-locate two mutually exclusive applications as part of a partial or universal time share agreement (§73.871(c)(6)) may be filed.
- Moves of over 5.6 kilometers to a common location or very close to a third-adjacent channel station in order to remediate interference to the other station (§73.871(c)(7)) may be filed.
- Other changes in general and/or legal information can also be filed as an amendment (§73.871(c)(5)).
- Finally, the rule states that unauthorized or untimely amendments are subject to return by the FCC's staff without consideration (§73.871(d)).

DISCUSSION

§73.871 is the primary rule that addresses application activity during and following a filing window for new LPFM construction permits. If this rule is repealed, it will mean that there will be no ground rules for a future LPFM filing window and this rule or a similar rule would have to be added through a Notice of Proposed Rulemaking prior to another LPFM filing window. This rule was last amended in 2012 for the previous LPFM filing window that took place in late 2013.³

³ - See *Creation of a Low Power Radio Service, Sixth Report and Order*, 27 FCC Rcd 15477-15478 (2012) ("Sixth Report and Order") at para. 201-204.

REC supports another filing window for new LPFM stations at a reasonable time following the previously announced upcoming filing window for new construction permits for FM translator stations licensed to AM broadcast stations.⁴ The Local Community Radio Act (“LCRA”)⁵ states that licenses for new LPFM stations and new FM translators are to be distributed based on community need.⁶ REC, through our outreach **weNEEDradio.org** is already starting to receive information from various parties interested in starting a LPFM station. As long as there is community need expressed, the LCRA requires the fair distribution of LPFM and translator licenses.⁷ This can be interpreted to mean that following the next FM translator filing window, the Commission will need to hold a LPFM filing window prior to holding another FM translator filing window. For when that window occurs, we need §73.871 codified.

From a housekeeping standpoint, the text of this rule contains a structural defect. For example in paragraph (c), subparagraph (1) reads:

- (1) Filings subject to paragraph (c)(5) of this section, site relocations of 5.6 kilometers or less for LPFM stations;

and subparagraph (2) reads:

- (2) Filings subject to paragraph (c)(5) of this section, site relocations of 5.6 kilometers or less for LP100 stations;

⁴ - See *Revitalization of the AM Radio Service, First Report and Order*, 30 FCC Rcd 12148-12154 (2015) at para. 7-17.

⁵ - Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁶ - LCRA Section 5: “The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations shall ensure that—

- (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations;
- (2) such decisions are made based on the needs of the local community; and
- (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.”

⁷ - *Id.*

Based on the preceding, subparagraphs (1) and (2) refer to the same service class. The former being the current name of the service and the latter being the name of the service prior to the *Sixth Report and Order*. The text of §73.871(c)(2) can be stricken without impacting the force of the rule as it is redundant.

CONCLUSION

While it was not clear in the notice what was being proposed for §73.871, we must assure that this rule remain as this contains the basic ground rules for the next LPFM filing window. We do agree that the rule can be modified to clean up the language while keeping the all substance of the original rule in-tact. We offer our proposed rewrite of the rule in Appendix A of this pleading. REC looks forward to working with the Commission on any future proposed changes to Subpart G of Part 73 of the Rules.

Respectfully submitted,

/s/

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APPENDIX A

REC PROPOSED REVISED TEXT OF §73.871

§73.871 Amendment of LPFM broadcast station applications

(a) New and major change applications may be amended without limitation during the pertinent filing window.

(b) Amendments that would improve the comparative position of new and major change applications will not be accepted after the close of the pertinent filing window.

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Site relocations of 5.6 kilometers or less;

(2) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed;

(3) Universal voluntary time-sharing agreements to apportion vacant time among the licensees;

(4) Other changes in general and/or legal information;

(5) Filings proposing transmitter site relocation to a common location submitted by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e); and

(6) Filings proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station.

(d) Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.